



COMMONWEALTH OF VIRGINIA

Department of Mines, Minerals and Energy

P.O. Drawer 900
Big Stone Gap, Virginia 24219-0900
(276) 523-8100
Frank A. Linkous, Chief

TO: Underground Coal Mine Operators

FROM: *Frank A. Linkous*
Frank A. Linkous, Chief

RE: *Temporary Continuation of State-Designated Mine Rescue Program*

DATE: December 7, 2007

This correspondence is to inform you that the State-Designated Mine Rescue Program (SDMR) will be continued during the implementation period following the final rule being promulgated by the Federal Mine Safety and Health Administration (MSHA) related to Section 4 of the MINER ACT, Mine Rescue Teams. This final rule is scheduled to be released by December 15, 2007. The time frame for fully implementing the final rule is not known to the public at this time and will determine the duration for extending the Virginia SDMR Program availability for participants in meeting MSHA mandates.

Enclosed you will find the renewal agreement for your mine. Please read the agreement with particular attention to Section 4, which establishes the conditions under which this limited extension of the program is being granted. Also, be advised that the fee structure is being established for quarterly payments of \$600 through the duration of the temporary agreement. If you intend to continue with this program extension for mine rescue team coverage, please sign and return the agreement and include the first quarter's fee of \$600 to the Department of Mines, Minerals and Energy prior to **December 15, 2007**. Furthermore, pursuant to Virginia Code 45.1-161.76A, you must submit a certificate of insurance providing evidence of Workers' Compensation coverage.

As with previous agreements, your participation in the Virginia SDMR Program will be confirmed with MSHA District 5 reflecting that you have mine rescue team coverage for your mine. I have been advised by the District Manager that MSHA will accept this coverage through the implementation phase established by the new rule.

Should you have any questions or concerns related to these actions or if we can be of any assistance, please contact me at (276) 523-8226, Mike Willis at (276) 523-8231, or Donna McFaddin at (276) 523-8229.

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AGREEMENT

This Agreement made this ____ day of _____, 2008, by and between the Commonwealth of Virginia, Department of Mines, Minerals and Energy, Division of Mines (hereinafter referred to as the Division) and

Company Name (Herein referred to as "Company")	/	Covered Mine Operation Mine No./Name Mine Index No.
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In consideration of the mutual covenants and stipulations set out herein, the Division and the Company agree as follows:

1. **DEFINITION:** For purposes of this Agreement, the following definition of "Mine Rescue Services" and/or "Mine Rescue Work" will apply:
Subject to the provisions of Virginia Code §§ 45.1-161.67 through 45.1-161.76, Mine Rescue Services and/or Mine Rescue Work shall mean services or work to search for, rescue, or transport a person or persons endangered, trapped, injured, or killed in a mine disaster or emergency situation and which must be performed by a mine rescue team equipped with individual breathing apparatus. Mine rescue work shall also include any rehabilitation work in the mine which is necessary to search for, rescue or transport any person or persons in the mine. For purposes of this Agreement, activities such as penetrating and exploring old works, breaching sealed areas, recovering equipment, rehabilitating a mine after rescue efforts are complete, and similar efforts requiring the use of personnel with self-contained breathing apparatus are not considered Mine Rescue Work.

2. **SCOPE OF SERVICE:** Pursuant to Virginia Code § 45.1-161.73, conditioned upon the payment by the Company to the Division of a fee in the amount provided in Paragraph 3 below, for the mine owned or operated by the Company which is the subject of the terms of this Agreement (herein "Covered Mine Operation"), the Division shall make available two (2) or more state designated mine rescue teams (herein "Teams") to perform mine rescue work at the Covered Mine Operation.

3. **COMPENSATION:** Mine Rescue Fees are to be paid in four equal installments of \$600.00 due on December 15, 2007; March 15, 2008; June 15, 2008; and September 15, 2008, through the duration of this agreement. In the event the term of this Agreement is less than a full year, then the Mine Rescue Fee shall be prorated with the fee calculated at the rate of \$200.00 per month. The fees are non-refundable. This Agreement is non-transferable. However, in the event the Mine Rescue Fee is paid in advance, and thereafter

the name of the Covered Mine Operation(s) is changed or all the equipment and personnel at a Covered Mine Operation are moved to another location due to depletion of reserves or due to adverse conditions, then upon written request to and approval by the Chief, the unused portion of the Mine Rescue Fee paid hereunder may be applied to Mine Rescue Fees, which become due for the new operation.

4. **DURATION OF COVERAGE:** The services to be provided pursuant to this Agreement shall commence on December 15, 2007, or the date this Agreement is fully executed, and said services shall terminate on either (i) the last day before the effective date of any final regulations or Emergency Temporary Standards issued by the U.S. Secretary of Labor with regard to mine rescue teams, pursuant to Section 4 of the Mine Improvement and New Emergency Response Act of 2006, (ii) December 31, 2008, or (iii) the date of termination established pursuant to Paragraph 7 below, whichever first occurs.
5. **LIABILITY:** Pursuant to Virginia Code § 45.1-161.76.A, for the purpose of Worker's Compensation coverage during any mine disaster to which the Team responds, the members of the Team shall be deemed to be within the employment of the operator of the Covered Mine Operation at which the disaster occurred. Each operator to whose mine the Team is assigned shall provide insurance coverage for Worker's Compensation liability and shall submit a certificate of such insurance to the Division. The certificate shall name the Department of Mines, Minerals, and Energy, Division of Mines as the holder of such certificate. The certificate shall bear an endorsement requiring that the insurer give the Department of Mines, Minerals, and Energy, Division of Mines, at least ten (10) days written notice, via Certified Mail or fax notification (276-235-8242), whenever substantive changes are made in the policy including any termination, cancellation, or failure to renew. The Division or the Team may require an additional certificate at any time if it has reason to believe that proper coverage has ceased, been cancelled, or does not exist. Failure to have such insurance or to submit such certification to the Division or to the Team shall result in the cancellation of any agreement between the Division and the Covered Mine Operation. The Team may refuse to respond to a mine disaster at any mine for which it has not received a certificate of such insurance coverage or for which such coverage has been cancelled. Notice of cancellation of the coverage shall be sent to the Division, and the Division shall thereafter immediately notify the Teams assigned to provide Mine Rescue Services for the Covered Mine Operation.

Pursuant to Virginia Code § 45.1-161.76.B, the members of the Team engaging in rescue work at a mine shall not be liable for civil damages for acts or omissions resulting from the rendering of such rescue work unless the act or omission is the result of gross negligence or willful misconduct. Pursuant to Virginia Code § 45.1-161.76.C, no operator providing personnel for the Team to engage in rescue work at a mine not owned or operated by the operator shall be deemed liable for any civil damages for acts or omissions resulting from the rendering of such rescue work.

6. **DUTIES OF TEAMS AND COMPANY:** When requested by the Division or by the operator of the Covered Mine Operation to which the Team has been assigned to perform rescue work, the Team shall respond to perform rescue work unless the Team is already responding to a prior request, is engaged in rescue work at another mine, or is competing in a mine rescue contest.

The Team shall not be required to perform any rescue work if the person or persons in charge of the Team, after arrival at the mine, in his or their sole discretion determines that the Team's performance of the requested work would likely result in injury or death to any Team member.

The Team shall be responsible for equipping each member of the Team and each of its mine rescue stations. The Team shall be responsible for maintaining its equipment in a safe, operable and permissible condition. The Team shall be responsible for training its members in proper mine rescue procedures. The Team shall at all times meet the regulatory requirements of the Federal Mine Safety and Health Administration contained in 30 CFR Part 49, or any successor provision. The Team shall provide all the equipment and materials set out in 30 CFR Section 49.6, as well as any other equipment that is used by mine rescue teams, including equipment not normally used in the day-to-day operation of a mine. All other equipment and materials necessary to do the Mine Rescue Work shall be supplied by the covered mine operation and shall be available at the mine.

7. **CANCELLATION AND TERMINATION:** The Company may terminate this Agreement at any time upon written notice to the Division. This written notice must be mailed certified or hand-delivered to the DMME office in Big Stone Gap, VA, or faxed to DMME at (276) 523-8242. The Mine Rescue Program service fee of \$200 per month will be due for the month in which the notice is received. The Division may cancel or terminate

this Agreement upon written notice to the Company upon the happening of one or more of the following events:

- a. During the duration of this Agreement, the Company fails to pay the annual fee, or any applicable installment thereof, by the end of the month in which it is due;
 - b. The Company fails or refuses to maintain Worker's Compensation Insurance which covers the Teams assigned to its Covered Mine Operation;
 - c. The Company fails to submit to the Division a certificate of coverage for its Worker's Compensation Insurance within seven (7) days of being requested by the Division to do so; or
 - d. If at any time during the term of this Agreement, the number of Teams participating is insufficient to make available to the Company at least two (2) Teams.
8. **ENTIRE AGREEMENT:** The entire Agreement between the parties is contained herein and in Virginia Code §§ 45.1-161.73 through 45.1-161.76, which is incorporated herein by reference. No amendment or modification of this Agreement shall be effective unless it is reduced to writing and signed by both parties. This Agreement is expressly subject to any changes in State or Federal laws, rules or regulations that affect the services to be rendered pursuant hereto. This Agreement has been executed pursuant to the laws and regulations of the Commonwealth of Virginia. Any disputes arising out of this Agreement will be decided under the laws of Virginia. This Agreement is being executed in duplicate effective as of the day and year first above written.

Company: _____

By: _____

Title: _____

**Commonwealth of Virginia
Department of Mines, Minerals and Energy
Division of Mines**

By: _____

**Frank A. Linkous, Chief
Division of Mines**